IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2363 OF 2004
ALONGWITH
CRIMINAL APPLICATION NO.2364 OF 2004

Mrs Rashmi Sandesh Patil ...Applicant
(In both Applications)
Vs.
Suresh Narayan Shetty ...Respondent
(In both Applications)

Shri Indrajeet Kulkarni for the Applicant in both Applilcations.
Shri A.S.Khandeparkar with R.S.Gokhale for the Respondent No.1 in both Applications.
Shri S.S. Pednekar, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.
DATE : DECEMBER 21, 2005.

P.C.:

1. Heard Shri Kulkarni appearing for the Applicant. The Applicant is wife of one Sandesh Patil who is the accused No.1 in complaint filed by the Respondent before the Judicial Magistrate, First Class, Kalyan being Criminal Case No.533 of 2001. The said complaint invokes provisions contained under section 138 of the Negotiable Instruments Act, 1881 as also alleges offences punishable under section 420 and 34 of the Penal Code.

2. Upon process being issued, the wife i.e. the original accused No.2-Applicant before me applied for discharge and her Application for discharge has been

rejected by the Judicial Magistrate, First Class, Kalyan vide order dated 30th July, 2003.

3. The submission of Shri Kulkarni appearing in support of these Applications is that as wife of the first accused and not having issued the subject cheque, the Applicant cannot be charged with offence punishable under section 138 of the Negotiable Instruments Act. He further submits that even section 420 read with section 34 of the Indian Penal Code cannot be invoked because it is the husband who has assured repayment of the amounts which were advanced by the complainant for setting up business by the husband. There is no averment, as far as the Applicant-wife, in the entire complaint, save and except stating that the cheque was issued by the complainant in the name of the Applicant before me and that there was fraudulent intention to grab the amount. Further, false assurances were given to the complainant with intention to cheat and cause wrongful gain to the accused. In his submission, these averments are not sufficient for proceeding with the complaint, as far as the Applicant-wife. This is fit case where this Court should exercise its inherent jurisdiction and quash the proceedings in so far the Applicant is concerned.

4. Shri Khandeparkar appearing for the original complainant points out that complaint is composite one alleging offence both under section 138 of the Negotiable Instruments Act and section 420 read with section 34 of the Indian Penal Code. The averments in the complaint and more particularly paras 2, 9 and 10 are sufficient to proceed and it cannot be said that the Magistrate was in any error in issuing process as well as rejecting the Application for discharge.

5. After having perused the complaints with the assistance of Shri Kulkarni and Shri Khandeparkar, in my view, in a complaint alleging offences not just punishable under section 138 of the Negotiable Instruments Act, but, section 420 read with section 34 of the Indian Penal Code as well, the learned Magistrate was right in holding that the Applicant cannot be discharged at this stage. The learned Magistrate has assigned cogent and satisfactory reasons and rightly concluded that this is a case where averments in the complaint disclose not just commission of offences under the Negotiable Instruments Act, primafacie, but also those punishable under section 420 of Indian Penal Code. It is the joint assurance as well as representation and further

the amounts having been advanced to both, the decision of the learned Magistrate in not discharging the Applicant-wife cannot be faulted.

6. The judgment relied upon by Shri Kulkarni in all fairness and with respect is applicable where on same contentions after complaint under section 138 of the Negotiable Instruments Act is filed subsequent complaint alleging offence punishable under section 420 of the Indian Penal Code is instituted. That cannot be allowed to proceed and would clearly amount to abuse of process of Court. In these circumstances, the Hon’ble Supreme Court in the decision reported in (2000) 2 Supreme Court Cases 636 (G.Sagar Suri and Anr. Vs. State of U.P. and Ors.) held that the High Court should have quashed the proceedings namely, subsequent complaint which was filed during pendency of the earlier complaint under section 138 of the Negotiable Instruments Act. That decision would be applicable in the facts and circumstances which are identical therein. Here a single complaint having been filed, the approach of the learned Magistrate cannot be said to be unfair, unjust or improper. In the light of the above discussion, Applications dismissed.

7. However, dismissal of the Applications shall not in any manner be construed as expression of opinion on merits of the matter and all contentions are open to be urged during the course of the proceedings before the Magistrate.

8. At the request of Shri Kulkarni the interim relief granted by this Court to continue for a further period of eight weeks. It would be open for the Applicant during this period to approach the Respondent-complainant and as agreed by Shri Khandeparkar forward the amount under the cheques and close the matter to the satisfaction of both parties.

JUDGE